

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

EARLENE CARR,

Plaintiff,

v.

OGNJEN MILANOVIC, HL MOTOR
GROUP, INC., HIGHLIGHT MOTOR
FREIGHT USA, INC., OLD REPUBLIC
INSURANCE COMPANY, and
GALLAGHER BASSET SERVICES,
INC.,

Defendants.

CASE NO. 5:22-CV-00782-JD

MOTION TO CONSOLIDATE COMPANION CASES

Defendants Ognjen Milanovic, HL Motor Group, Inc., Highlight Motor Freight USA, Inc., Old Republic Insurance company, and Gallagher Basset Services, Inc. (“Defendants”), by their counsel of record, pursuant to Rule 42 and LCvR3.7, move the Court for an Order granting consolidation of the current lawsuit and its two companion cases. In support of their Motion, Defendants state as follows:

1. A district court has broad discretion to consolidate civil actions when they involve commons questions of law and fact, when the parties would not be prejudiced by consolidation, and when consolidation would serve the interests of judicial economy. FED. R. CIV. P. 42(a); *Boggs v. Chesapeake Energy Corp.*, 286 F.R.D. 621, 623 (W.D. Okla. 2012).

2. Courts should apply the “first-to-file” rule when two or more related federal suits are pending. *Wakaya Perfection, LLC v. Youngevity Int’l, Inc.*, 910 F.3d 1118, 1124 (10th Cir. 2018). The Tenth Circuit has recognized that “the first court in which jurisdiction attaches has priority to consider the case” and “jurisdiction “relates back to the filing of the complaint.” *Id.* When a complaint is initially filed in state court and later removed to the federal district court, the federal district court should focus on the date that the complaints were initially filed and not on the date that a case had been removed. *Id.* at 1125-26.

3. Plaintiff Earlene Carr filed this lawsuit (hereinafter, “*Carr*”) in the District Court of Canadian County, Oklahoma on August 5, 2022. Defendants removed this lawsuit to the United States District Court for the Western District of Oklahoma on September 2, 2022.

4. Defendants have identified two companion cases to this lawsuit. These include *Randy Lundy v. HL Motor Group, Inc. et al.*, Case No. 5:22-CV-00699-F (hereinafter, “*Lundy*”) and *Farmers Mutual Fire Insurance Company of Okarche v. HL Motor Group, Inc. of Richmond Ontario, et al.* Case No. 5:22-CV-00752-F (hereinafter, “*Farmers*”) (Doc. No. 15). These companion cases were initially filed in state court and were recently removed to federal court.

5. All three matters arise from an August 8, 2020 collision between a tractor-trailer operated by Ognjen Milanovic and real property owned and/or insured by the respective Plaintiffs.

6. All three matters involve similar allegations against similar defendants involving common questions of law and fact. Each defendant in the underlying matters is represented by Lewis Brisbois.

7. If allowed to proceed as separate lawsuits, duplicate written discovery, duplicate depositions, duplicative court appearances, and duplicate expert fees to testify in three separate cases on the same issues will greatly increase the cost to the parties involved.

8. Consolidation of the three lawsuits is warranted and proper pursuant to Rule 42.

9. No party will be prejudiced by the consolidation of these actions.

WHEREFORE, for the above and foregoing reasons, Defendants respectfully request that this Court enter an Order finding that *Lundy*, *Carr*, and *Farmers* all involve common questions of law and fact, that the parties would not be prejudiced by consolidation, that consolidation would best serve the interests of judicial economy, and further order the consolidation of *Lundy*, *Carr*, and *Farmers* into a single action before the Honorable Stephen P. Friot with a copy of the order of consolidation filed in each case affected.

/s/ Jeremy K. Schrag

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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2022, I filed the above Motion to Consolidate using the Court's electronic filing system which will send notice to all counsel of record and also sent a copy by electronic mail to:

Amanda Blackwood
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Attorney for Plaintiff

/s/ Jeremy K. Schrag

Jeremy K. Schrag